

STATE OF ILLINOIS  
LIQUOR CONTROL COMMISSION

GIGGS BAJWA CORP.  
d/b/a Gas Depot  
151 Dixie Highway  
Harvey, IL

Appellant,

vs.

HARVEY LIQUOR CONTROL  
COMMISSION

Appellee.

Case No.: 21 APP 02

License Number: 1A-1122865

ORDER

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (hereinafter "State Commission") upon the appeal of Giggs Bajwa Corp., Appellant, (hereinafter "Giggs Bajwa") the Commission being otherwise fully informed and a majority of its members do hereby state the following:

Procedural History

Giggs Bajwa is an applicant for the renewal of a liquor license at 151 Dixie Highway, Harvey, Illinois. The Harvey Liquor Control Commission (hereinafter "Harvey Commission") had previously issued a Class D liquor license to Giggs Bajwa at 151 Dixie Highway in Harvey. On or about August 5, 2020, Giggs Bajwa received a liquor license renewal packet from the Harvey Commission. On October 2, 2020, Giggs Bajwa submitted a renewal application to the Harvey Commission. On or about November 13, 2020, the Harvey Commission sent a Notice of Hearing for Intent to Not Renew the City of Harvey Liquor License to Giggs Bajwa counsel. The Hearing was scheduled on November 19, 2020. The November 19, 2020, Hearing was continued twice with a final hearing scheduled on December 17, 2020. On December 22, 2020, the Harvey Commission issued an order to deny the renewal of the Giggs Bajwa Class D liquor license. On January 7, 2021, Giggs Bajwa filed a Petition of Appeal with the State Commission which held an "on the record" hearing on October 4, 2021, before Chair Cynthia Berg and Commissioner Julieta LaMalfa. The State Commission reviewed the entire record and deliberated on the matter at the November 17, 2021, State Commission meeting.

### Decision

Upon review of the record of the Harvey Commission, the State Commission AFFIRMS the order of the Harvey Commission to deny the renewal of Giggs Bajwa's Class D liquor license.

### Discussion

Section 7-9 of the Liquor Control Act of 1934 places the statutory responsibility to hear appeals from final orders entered by local liquor commissioners on the Commission. 235 ILCS 5/7-9. If the county board, city council, or board of trustees of the associated jurisdiction has adopted a resolution requiring the review of an order to be conducted on the record, the Commission will conduct an "On the Record" review of the official record of proceedings before the Local Liquor Commission. *Id.* The Commission may only review the evidence found in the official record. *Id.* The City of Harvey has adopted a local ordinance requiring any appeal from an order of the Harvey Liquor Commissioner to be a review of the official record. *Harvey Ordinances, Section 5-06-210(B)*. Accordingly, the Commission will only review the evidence as found in the official record.

In reviewing the propriety of the order or action of the local liquor control commissioner, the Illinois Liquor Control Commission shall consider the following questions:

- (a) Whether the local liquor control commissioner has proceeded in the manner provided by law;
- (b) Whether the order is supported by the findings;
- (c) Whether the findings are supported by substantial evidence in the light of the whole record.

235 ILCS 5/7-9.

The Illinois Appellate Court has provided guidance that this Commission's duty is to determine whether local agency abused its discretion. *Koehler v. Illinois Liquor Control Comm'n*, 405 Ill. App. 3d 1071, 1080, (2<sup>nd</sup> Dist. 2010). "Such review mandated assessment of the discretion used by the local authority, stating that "[t]he functions of the State commission, then, in conducting a review on the record of license suspension proceedings before a local liquor control commissioner is to consider whether the local commissioner committed an abuse of discretion. *Id.*

- A. Whether the local liquor control commissioner has proceeded in the manner provided by law.**

In reviewing the actions of a local liquor commission, the Commission must review whether the local liquor commission offered appropriate process in arriving at its decision. Upon a review of the record in this case, the Harvey Commission satisfied the minimum requirements of law in the review and disposition of the Giggs Bajwa liquor license application. The Harvey Commission gave Giggs Bajwa adequate notice of license renewal and sufficient due process prior to issuing a December 22, 2020, order to deny the renewal of Giggs Bajwa's Class D liquor license.

The record consists of uncontested facts related to the timeline of Giggs Bajwa's license renewal process which ultimately resulted in the December 22, 2020, denial. The Harvey Commission sent a license renewal package to Giggs Bajwa on or about August 5, 2020. The renewal notice contained a letter from Mayor Christopher J. Clark which highlighted the renewal deadline date in the following paragraph:

**The deadline to submit a completed application and all required information and documentation is Friday, October 2, 2020. No applications will be accepted for consideration for liquor licenses for the 2020-2021 license year after that date, and no supplemental information or documentation will be accepted after that date.**

*City Ex. A-5 (emphasis included).* Furthermore, the same letter advised applicants of renewal application assistance offered by city officials and legal counsel for an additional \$500 and that applicants must assume the risk of application denial if the applicant submitted a "deficient or incomplete" application. Applicants would not be permitted "to amend, correct, or supplement your documentation" after submission. *City Ex. A-6.*

The remainder of the timeline of the renewal denial as detailed in the Harvey Commission denial order is also not contested and demonstrates the Harvey Commission provided Giggs Bajwa with fairness and due process prior to denying the renewal of the license. After Giggs Bajwa filed the renewal application and documentation by the October 2, 2020, deadline, the Harvey Commission sent Giggs Bajwa a Notice of Hearing for Intent to Not Renew on November 13, 2020. The Notice provided that the Harvey Commission would hold a hearing on November 19, 2020, "to hear evidence and take testimony concerning facts and circumstances" of Harvey's non-renewal of the license. *Harvey Notice of Hearing, p. 1.* The Notice listed various documents Giggs Bajwa had allegedly failed to submit with the renewal application. After this notice, the Harvey Commission gave Giggs Bajwa two continuances before it held the renewal hearing on December 17, 2020. Therefore, the Harvey Commission gave Giggs Bajwa adequate notice of the

charges against the license renewal, the opportunity to be heard, and the opportunity to prepare a defense of the charges. In this matter, the Harvey Commission proceeded in a manner according to law.

**B. Whether the findings are supported by substantial evidence in the light of the whole record.**

Upon review, an agency's findings of fact are held to be prima facie true and correct, and they must be affirmed unless the court concludes that they are against the manifest weight of the evidence.” *Daley v. El Flanboyen Corp.*, 321 Ill. App. 3d 68, 71, (1<sup>st</sup> Dist. 2001). Giggs Bajwa does not contest most, if not all, facts detailed in the Harvey Commission order and, therefore, the State Commission adopts facts alleged in the Harvey Commission order detailed in relevant part as follows:

1. “The Application was incomplete as of the October 2, 2020 deadline, in that:
  - a. Respondent did not furnish articles of incorporation;
  - b. Respondent did not furnish November 2019 through current Illinois Department of Revenue ST-1 Sales and Use Tax and E911 Surcharge Return (“*ST-1s*”) forms;
  - c. Respondent did not remit liquor by the drink excise tax return forms (“*Liquor Returns*”) or corresponding payment for the 2019-20 liquor license year;
  - d. Respondent did not tender a certificate of insurance reflecting workers' compensation coverage; and
  - e. Respondent did not tender a certificate of occupancy for the licensed premises.”
2. “...respondent failed to timely submit a completed application and supplementary records to the City as required to enable processing of its renewal application in a manner sufficient to demonstrate that Respondent is entitled to renewal of its liquor license, that Respondent is compliant with federal, state and local laws, that the licensed premises is suitable for the alcoholic liquor sales taking place therein, or that Respondent has complied with the undersigned's license renewal process rules and application directives.”

3. "After the Hearing was scheduled, Respondent undertook efforts to supplement the missing items ranging from two to two and a half months following the liquor license renewal application deadline."
4. "On the morning of the scheduled December 2, 2020 hearing, Respondent, through its counsel, filed a copy of its certificate of liability insurance demonstrating workers' compensation coverage, together with a representation that the certificate had previously been furnished to a different City official in a different department in connection with a matter unrelated to the liquor license renewal cycle."
5. "On the morning of the scheduled December 2, 2020 hearing, Respondent filed ST-ls corresponding to the 2019 calendar year. ...The submission was two months late and did not include any returns from calendar 2020 as required in the application packet."
6. "On December 16, 2020 liquor license renewal hearing, Respondent's counsel furnished Liquor Returns covering the November 2019 through November 2020 period."<sup>1</sup>
7. "No liquor by the drink excise tax payments accompanied the Liquor Returns as of the December 17, 2020 hearing."
8. "After the missing liquor by the drink excise tax payments were discussed at the hearing, payment for the same was tendered to the City by Respondent on December 17, 2020 after the close of the hearing."
9. "As of the December 17, 2020 hearing, Respondent still had not submitted any 2020 ST- 1s."
10. "As of the December 17, 2020 hearing, Respondent still had not submitted any Articles of Incorporation."
11. "As of the December 17, 2020 hearing, Respondent still had not submitted a certificate of occupancy. Respondent's counsel explained that Respondent did not own the property and had been unsuccessful in attempts to contact its international landlord to provide a copy of the certificate of occupancy. Moreover, Respondent's counsel represented that he had contacted the City's Building and Fire Departments in an attempt to obtain a copy of the certificate of occupancy, but had been unsuccessful in generating a

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<sup>1</sup> Local hearing occurred on December 17, 2020. The Licensee provided the information the day before the hearing.

substantive response or obtaining a copy of the certificate of occupancy from the City's files.”

12. “After the close of the Hearing but prior to issuance of this Order, Respondent furnished its Articles of Incorporation and 2020 ST-ls on or about December 18, 2020.”

*Order and Decision of Local Liquor Control Commissioner, pp. 2-4.*

Therefore, the facts cited herein confirm the Harvey Commission relied on substantial evidence from the record to support its finding that Giggs Bajwa did not comply with renewal application requirements.

### **C. Whether the order is supported by the findings;**

In reviewing whether the order is supported by the findings, this Commission will analyze whether the findings contained within the order constitute grounds to deny the renewal of the license. We take guidance from Administrative Review Law jurisprudence. The Illinois Appellate Court has ruled that, as a reviewing body, the issue is not whether the reviewing court would decide upon a more lenient penalty were it initially to determine the appropriate discipline, but rather, in view of the circumstances, whether this court can say that the commission, in opting for a particular penalty, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the commission or statute. *Jacquelyn's Lounge, Inc. v. License Appeal Comm'n of City of Chicago*, 277 Ill. App. 3d 959, 966, (1<sup>st</sup> Dist. 1996).

The essence of Giggs Bajwa’s argument is not whether it submitted an incomplete liquor license renewal application but that the penalty imposed by the Harvey Commission, the non-renewal of the license, is an unreasonable and arbitrary abuse of discretion. As Giggs Bajwa correctly argues, refusing to renew a license is tantamount to revoking a license. *Womack v. Local Liquor Control Commission of the City of Elgin*, 229 Ill. App. 3d 402 (2<sup>nd</sup> Dist. 1992). To support its contention that the Harvey Commission acted unreasonably or arbitrarily, Giggs Bajwa references *Jacqueline’s Lounge* (cited above) and *Hansen v. Illinois Liquor Control Commission*, 201 Ill. App. 3d 974 (2<sup>nd</sup> Dist. 1990). Supported by *Jacqueline’s Lounge* and *Hansen*, Giggs Bajwa argues a local liquor control commission abuses its discretion if it revokes a license based on a single violation for which the owner of a licensed establishment had no knowledge of the violation and when the licensee had no prior violations against the license. The fairness principles



set forth by *Jacqueline's Lounge* and *Hansen* properly restrain regulators from imposing a license death sentence (revocation or refusing to renew) unless the owners of the license had prior knowledge of a violation or violations so that the license owners have a reasonable opportunity to prevent such a violation.

Giggs Bajwa's reliance on case law fairness principles to argue the Harvey Commission abused its discretion in this case is misguided, however, because the record is clear that the Harvey Commission gave the licensed owners of Giggs Bajwa every opportunity to comply with Harvey renewal procedures before it chose not to renew the license. First, it is not contested that the Harvey Commission sent a renewal packet to Giggs Bajwa before the renewal deadline. Second, the letter in the renewal packet from Mayor Clark was abundantly clear to the license owners:

**The deadline to submit a completed application and all required information and documentation is Friday, October 2, 2020. No applications will be accepted for consideration for liquor licenses for the 2020-2021 license year after that date, and no supplemental information or documentation will be accepted after that date.**

*City Ex. A-5 (emphasis included).* Third, the Harvey Commission was not playing an overly technical game of "gotcha" with a failed renewal submission. The renewal letter made it clear that the Harvey Commission would provide technical assistance in filing the license renewal (for an extra fee) and that the refusal of such service would come at the risk of the denial of the renewal application. Fourth, not only was Giggs Bajwa deficient in providing documents for the renewal but it was delinquent in the payment of taxes related to the document submissions. Giggs Bajwa's tax payment deficiencies alone could have served as the basis for the denial of the renewal. Fifth, the Harvey Commission gave notice to Giggs Bajwa of the specific documents it needed to complete the application. Presumably, if Giggs Bajwa could have provided all documentation by the December 17, 2020, hearing, the Harvey Commission may have considered renewing the license. Even after two hearing continuances and a final hearing on December 17, 2020, Giggs Bajwa was unable to provide the Harvey Commission with a Certificate of Occupancy or Articles of Incorporation for Giggs Bajwa Corp. While Giggs Bajwa argued that it had no control providing the Certificate of Occupancy (hereinafter "C of O") because it could not obtain the C of O from an out-of-town international property owner nor from the Harvey Fire/Building Departments, there is no evidence in the record that Giggs Bajwa even tried to obtain the C of O. Between August 5, 2020, and December 17, 2020, Giggs Bajwa was on notice that it needed the C of O. During that

period, it could have formally requested the City of Harvey Fire/Building Departments (possibly through the Freedom of Information Act request) to provide evidence of the C of O. The record is bereft of any evidence that Giggs Bajwa made any attempt whatsoever to obtain the C of O. The record is also unclear as to why Giggs Bajwa would not have completed the relatively simple task of providing the Articles of Incorporation for four and half months prior to or during the renewal hearing.

Under the circumstances cited herein, therefore, the licensed owners of Giggs Bajwa were not caught off guard by the Harvey Commission renewal requirements in the way that the licensed owners in *Jacqueline's Lounge* and *Hansen* may have been surprised to find out their employees were selling drugs from their bars. While it may seem harsh in some respects for the Harvey Commission to refuse to renew the Giggs Bajwa liquor license for an untimely submission of renewal documents, such a refusal in this case was not arbitrary, unreasonable, or an abuse of discretion. From the Harvey Commission perspective, it has the right to establish a zero-tolerance policy, or even a limited tolerance policy, in its license renewal process. In this matter, in order to make Giggs Bajwa comply with renewal application submissions including the payment and submission of tax returns, the Harvey Commission had to spend considerable time and resources. In the end, the Harvey Commission's resources spent on the Giggs Bajwa renewal likely outweighed the benefits gained from tax collection efforts. If the Harvey Commission expended similar resources on all or even many of its other license holders, it would significantly hinder Harvey government operations. While not every local commission would refuse to renew a liquor license under these circumstances, Harvey has the right to hold a firm line in denying the renewal of the Giggs Bajwa license for document submission failures. Whether the State Commission agrees or disagrees with Harvey's refusal to renew the license is less important than determining whether Harvey abused its discretion. Under the circumstances cited herein, it is clear to the State Commission that the Harvey Commission did not abuse its discretion in such a denial.

**IT IS HEREBY ORDERED:**


For the reasons stated herein, the decision of the Harvey Local Liquor Commission refusing to renew the Giggs Bajwa Class D liquor license is **AFFIRMED**.

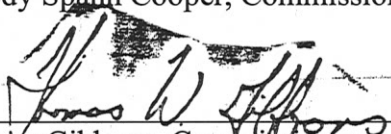


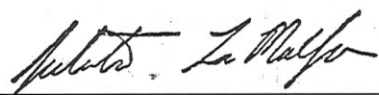
Pursuant to 235 ILCS 5/7-10 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within twenty (20) days from the service of this Order. The date of mailing is deemed to be the date of service. If no Petition for Rehearing is filed, this order will be considered the final order in this matter. If the parties wish to pursue an Administrative Review action in the Circuit Court, the Petition for Rehearing must be filed within twenty (20) days after service of this Order as such the Petition for Rehearing is a jurisdictional prerequisite to filing an Administrative Review action.

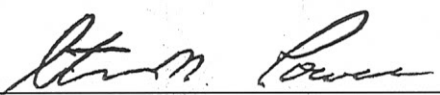
ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois, on November 17, 2021.

  
Cynthia Berg, Chairman

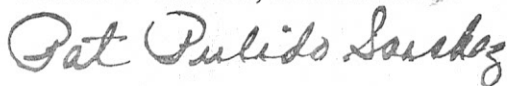
  
Melody Spann Cooper, Commissioner

  
Thomas Gibbons, Commissioner

  
Julieta LaMalfa, Commissioner

  
Steven Powell, Commissioner

Donald O'Connell, Commissioner

  
Patricia Pulido Sanchez, Commissioner

STATE OF ILLINOIS                   )  
COUNTY OF COOK                   ) 21APP 02

UNDER PENALTY OF PERJURY, as provided by law, section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that I caused copies of the foregoing ORDER to be e-mailed by agreement of the parties prior to 5:00 p.m. on the following date: December 20, 2021.

*/s/ Richard R. Haymaker*

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Richard R. Haymaker

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